

illustrated for similar in-force policies, this must be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and

6. disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

- a. fully allocated expenses;
- b. marginal expenses; or
- c. a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the department.

D.1. The illustration actuary shall file a certification with the board and with the department:

- a. annually for all policy forms for which illustrations are used; and
- b. before a new policy form is illustrated.

2. If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the department promptly.

E. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the department promptly of his or her inability to certify.

F. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

- 1. that the illustration formats meet the requirements of this regulation and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and
- 2. that the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in §3319.C.6.

G. The annual certifications shall be provided to the department each year by a date determined by the insurer.

H. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the department of that fact promptly and disclose the reason for the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:984 (October 1996).

§3321. Severability

A. If any provision of this regulation, or its application to any person or circumstance, is, for any reason, held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:984 (October 1996).

§3323. Effective Date

A. This regulation shall become effective July 1, 1997 and shall apply to policies sold on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:984 (October 1996).

Chapter 35. Regulation 56 Credit for Reinsurance

§3501. Purpose

A. The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the statutory provisions on Credit for Reinsurance, R.S. Title 22, Sections 941 et seq. The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3503. Severability

A. If any provisions of this regulation, or their application to any person or circumstance, are held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end, the provisions of this regulation are separable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3505. Credit for Reinsurance Reinsurer Authorized in This State

A. Pursuant to R.S. 22:941(B), credit shall be allowed when the reinsurance is ceded by a domestic insurer to an assuming insurer which is authorized in this state. An authorized insurer is one which holds a certificate of authority to transact insurance or reinsurance, as of the date of the ceding insurer's quarterly or annual financial statement filed in accordance with R.S.22:1451(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3507. Credit for Reinsurance

A. Pursuant to R.S.22:941(C), credit shall be allowed when the reinsurance is ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's quarterly or annual financial statement, filed in accordance with R.S.22:1451(D). An accredited reinsurer shall be approved by the Department of Insurance after filing an application for accreditation, and:

1. filing with the Department of Insurance a properly executed Form AR-1 (§3525.B) as evidence of its submission to the jurisdiction of this state; and
2. submission of the reinsurer to the authority of the Department of Insurance to examine books and records of the reinsurer; and
3. demonstration by the reinsurer that the reinsurer is licensed or authorized to transact insurance or reinsurance in, or in the case of a United States branch of an alien assuming insurer, is entered through, at least one state which employs standards regarding credit for reinsurance equal to or exceeding those applicable under §3507.A.3, and
4. annually filing with the Department of Insurance a true copy of its annual statement filed with the insurance department of its state of domicile, or in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recently audited financial statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3509. Credit for Reinsurance

A. Pursuant to R.S. 22:941(D), credit shall also be allowed when the reinsurance is ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's quarterly or annual financial statement filed in accordance with R.S.22:1451(D), maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in R.S.22:941.2(B), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall file the Annual Registration for Reinsurers Form and report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by authorized insurers to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer.

1. In the case of a single assuming insurer, the trust shall consist of a trustee account in an amount not less than

the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million.

2. In the case of a group of insurers that includes individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's aggregate liabilities attributable to business written in the United States, and in addition, the group shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by its domiciliary regulator and its independent public accountants.

3. In the case of a group of incorporated insurers under common administration, the group shall:

- a. submit to this state's authority to examine its books and records and bear the expense of the examination;
- b. maintain aggregate policyholders surplus of \$10 billion;
- c. maintain a trust consisting of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any members of the group;
- d. in addition, maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for these liabilities;
- e. file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and certify that any member examined will bear the expense of any such examination;

- f. within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group audited by independent public accountants.

C. Any credit for reinsurance shall not be granted under §3509.A unless the form and amendments to the trust have been approved by the Department of Insurance. The trust instrument shall provide that:

1. contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;
2. legal title to the assets of the trust shall be vested in the trustees of the trust for its United States ceding insurers, their assigns and successors in interest;
3. the trust shall be subject to examination as determined by the department;

4. the trust shall remain in existence for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under the reinsurance agreements subject to the trust;

5. no later than February 28 of each year the trustees of the trust shall provide a written report to the department setting forth the balance in the trust and listing the investments of the trust of the preceding year, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the succeeding December 31.

D. If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state, credit permitted by §3509 shall not be allowed unless:

1. the assuming insurer provides the following in all reinsurance agreements:

a. that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, comply with all requirements necessary to give such court jurisdiction, and abide by the final decision of the district court or appellate court;

b. to designate the commissioner its true and lawful attorney, who may be served any lawful service of process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer;

c. the provisions of §3509.D.1.a.-b shall not be construed to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the reinsurance agreement;

d. the assuming insurer files with the department a list identifying its officers and directors (or similar principals), along with biographical information for each, and provides an annual update of this information; and

e. the assuming insurer agrees to allow the department to examine its books and records and to waive any protection it has under any secrecy laws of its domiciliary jurisdiction, except that such examinations will only take place upon the commissioner's showing of good cause for concern about the financial soundness or solvency of the subject entity.

E. The ceding insurer may take credit for the reserves on such ceded risks to the extent reinsured, except that:

1. no credit shall be taken for such reserves unless the insurer accepting the reinsurance meets the requirements set forth in §3509 as valid assuming insurers;

2. no credit shall be allowed to any ceding insurer for reinsurance, as an admitted asset or as a deduction from liability, unless the reinsurance shall be payable, in the event of insolvency of the ceding insurer, to its liquidator or receiver on the basis of the claim or claims allowed against the insolvent ceding insurer by any court of competent

jurisdiction or any justice or judge thereof, or by any receiver or liquidator having authority to determine and allow such claims, except either where the reinsurance contract with the consent of the direct insured or insureds specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer or when the assuming insurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees;

3. no credit shall be permitted unless the assuming insurer has been doing business in its country of domicile for at least three years, or is an affiliate of an insurer or reinsurer which has been doing business in its country of domicile for at least three years, unless the department, for good cause shown, waives this three-year operating requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3511. Credit for Reinsurance Required by Law

A. Pursuant to R.S.22:941(E), any credit for reinsurance shall also be allowed when the reinsurance is ceded by a domestic insurer to an assuming insurer not meeting the requirements of R.S.22:941(B),(C), or (D), only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in §3511, *jurisdiction* means any state, district, or territory of the United States and any lawful national government.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3513. Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer

A. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer that fails to satisfy the requirements of R.S. 22:941 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer, and such a reduction shall be in the amount of funds held by, or on behalf of, the ceding insurer, including funds held in trust in this state for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in this state subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in R.S. 22:941.2(B). The security may be in the form of:

1. cash;

2. securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and qualifying as admitted assets;

3. clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States institution, as defined in R.S. 22:941.2(A), effective no later than December 31 in respect of the year for which filing is being made, and in possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first;

4. any other form of security acceptable to the commissioner.

B. A reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to §3513.A.-C of this regulation shall be allowed only when the requirements of §§3515, 3517, and 3519 of this regulation are met and the assuming insurer has filed the Annual Registration for Reinsurers Form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3515. Trust Agreements Qualified under §3513

A. As used in §3515:

Beneficiary—The entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

Grantor—The entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

Obligations—As used in §3515.B.11, means:

a. reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

b. reserves for reinsured losses reported and outstanding;

c. reserves for reinsured losses incurred but not reported; and

d. reserves for allocated reinsured loss expenses and unearned premiums.

B. Required Conditions

1. The trust agreement shall be entered into between the *beneficiary*, the *grantor*, and a trustee which shall be a qualified *United States financial institution*, as defined in Section R.S. 22:941.2(A) of the Act.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to §3515. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary, in writing, and the trust agreement must provide that the written notice described in §3515.B.4.a must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

4. The trust agreement shall provide that:

a. the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

b. no other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

c. it is not subject to any conditions or qualifications outside of the trust agreement; and

d. it shall not contain references to any other agreements or documents except as provided for under §3515.B.11.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

a. receive assets and hold all assets in a safe place;

b. determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

c. furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

d. notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

e. upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

f. allow no substitutions or withdrawals of assets from the trust account; except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

10. The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

11. Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this regulation, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

a. to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

b. to make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

c. where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution, as defined in R.S. 22:941.2(A) of the Act, apart from its general assets, in trust for such uses and purposes specified in §3515.B.11.a.-b as may remain executory after such withdrawal and for any period after the termination date.

12. The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by §3515.D.1.b, so long as these required conditions are included in the trust agreement.

C. Permitted Conditions

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice, and that the trustee

may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive, from time to time, payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in §3515.D.1.b.

4. The trust agreement may provide that the beneficiary may at any time designate a party to whom all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Additional Conditions Applicable to Reinsurance Agreements

1. A reinsurance agreement which is entered into in conjunction with a trust agreement and the establishment of a trust account may contain provisions that:

a. require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer and specifying what the agreement is to cover;

b. stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the *Insurance Code*, or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and

health, then the trust agreement may contain the provisions required by §3515.D.1.b in lieu of including such provisions in the reinsurance agreement;

c. require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may, whenever necessary, negotiate these assets without consent or signature from the assuming insurer or any other entity;

d. require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

e. stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law including, without limitation, any liquidator, rehabilitator, receiver, or conservator of such company without diminution because of insolvency on the part of the ceding insurer or the assuming insurer only for the following purposes:

i. to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

ii. to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

iii. to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and

iv. to pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

2. The reinsurance agreement may also contain provisions that:

a. give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

i. the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

ii. after withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount;

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

b. provide for:

i. the return of any amount withdrawn in excess of the actual amounts required for §3515.D.1.e.i.-iii, or in the case of §3515.D.1.e.iv any amounts that are subsequently determined not to be due; and

ii. interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to §3515.D.1.e.iii;

c. permit the award by any arbitration panel or court of competent jurisdiction of:

i. interest at a rate different from that provided in §3515.D.2.b.ii;

ii. court of arbitration costs;

iii. attorney's fees; and

iv. any other reasonable expenses.

3. Financial Reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

4. Existing Agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to September 1, 1995 will continue to be acceptable until August 31, 1996, at which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

5. The failure of any trust agreement to specifically identify the beneficiary as defined in §3515.A shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3517. Letters of Credit Qualified under §3513

A. The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution, as defined in R.S. 22:941.2(A). The letter of credit shall contain an issue date and date of

expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds, and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in §3517.I.1. As used in §3517, *beneficiary* means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

B. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

D. The term of the letter of credit shall be for at least one year and shall contain an evergreen clause which prevents the expiration of the letter of credit without due notice from the issuer. The evergreen clause shall provide for a period of no less than 30 days notice prior to expiry date or nonrenewal.

E. The letter of credit shall state whether it is subject to and governed by the laws of this state or the latest edition of the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce* (Publication 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. If the letter of credit is made subject to the latest edition of the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce* (Publication 400), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 or the successor to Article 19 in later editions of such publication occur.

G. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to R.S. 22:941.2(A).

H. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution, as described in §3517.G, then the following additional requirements shall be met:

1. the issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. the evergreen clause shall provide for 30 days notice prior to expiry date for nonrenewal.

I. Reinsurance Agreement Provisions

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

a. require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

b. stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer, pursuant to the provisions of the reinsurance agreement, may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

i. to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

ii. to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

iii. to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

iv. to pay any other amounts the ceding insurer claims are due under the reinsurance agreement;

c. All of the foregoing provisions of §3517.I.1 should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in §3517.I.1 shall preclude the ceding insurer and assuming insurer from providing for:

a. an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to §3517.I.1.b.iii; and/or

b. the return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of §3517.I.1.b.iv, any amounts that are subsequently determined not to be due.

3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and health where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of §3517.I.1.b, require

that the parties enter into a *Trust Agreement* which may be incorporated into the reinsurance agreement or be a separate document.

J. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3519. Other Security

A. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3521. Reinsurance Contract

A. Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of §§3505, 3507, 3509, or 3513 of this regulation or otherwise in compliance with R.S.22:941 after the adoption of this regulation unless the reinsurance agreement:

1. includes a proper insolvency clause pursuant to R.S. 22:941(G)(2); and

2. includes a provision pursuant to R.S.22:941(F)(1) whereby the assuming insurer, if not authorized or accredited, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3523. Agreements Requiring Approval

A. The following kinds of reinsurance agreements shall not be entered into by any domestic insurer unless they are first submitted to the Commissioner of Insurance for his written approval, who shall approve the same if the terms thereof do not injuriously affect the rights of policyholders of any of the insurers parties thereto:

1. agreements of reinsurance of any life insurer other than agreements made in the ordinary course of business covering reinsurance of individual lives or joint lives under reinsurance agreements relating to current business; or

2. agreements whereby any insurer, other than a life insurer, cedes any existing outstanding reserves to an insurer not authorized to transact business in this state, or cedes to any insurer or insurers at one time, or during a period of six consecutive months more than 20 percent of the total amount of its outstanding reserves, not including in either case premiums ceded by agreements made in the ordinary course of business covering the reinsurance of individual risks under reinsurance relating to current business.

B. If the Commissioner of Insurance refuses to approve any such agreement submitted for his approval, he shall grant the insurer a hearing upon request.

C. In addition to the requirements of §3523.A, the commissioner may require that any reinsurance agreement must be approved, in writing, by the commissioner when the agreement is between a Louisiana domestic insurer and a nonadmitted or unauthorized assuming insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3525. Contracts Affected

A. All new and renewal reinsurance transactions entered into after December 31, 1995 shall conform to the requirements of law and this regulation if credit is to be given to the ceding insurer for such reinsurance.

B. Form AR-1

FORM AR-1 CERTIFICATE OF ASSUMING INSURER

_____ (Name of Officer)	_____ (Title of Officer)
of	
_____ (Name of Assuming Insurer)	
the assuming insurer under a reinsurance agreement(s) with one or more insurers domiciled in	
_____ (Name of State)	
hereby certify that	
_____ (Name of Assuming Insurer)	
("Assuming Insurer"):	
1. Submits to the jurisdiction of any court of competent	jurisdiction in
_____ (Ceding Insurer's State of Domicile)	
for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).	

2. Designates the insurance commissioner of _____ as its lawful

(Ceding Insurer's State of Domicile)
attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the insurance commissioner of _____

(Ceding Insurer's State of Domicile)
to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____

(Ceding Insurer's State of Domicile)
reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the insurance commissioner at least once per calendar quarter.

Dated: _____

(Name of Assuming Insurer)

BY: _____

(Name of Officer)

(Title of Officer)

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

Chapter 37. Regulation 57 Life and Health Reinsurance Agreements

§3701. Preamble

A. The Department of Insurance recognizes that insurers possessing a certificate of authority routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.

B. However, it is improper for an insurer possessing a certificate of authority in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Section 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3703. Scope

A. This regulation shall apply to all domestic life and accident and health insurers and to all other life and accident and health insurers which possess a certificate of authority and which are not subject to a substantially similar regulation in their domiciliary state. This regulation shall also similarly apply to property and casualty insurers which possess a certificate of authority with respect to their accident and health business. This regulation shall not apply

to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Section 2(H), 3 and 947.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 21:1246 (November 1995).

§3705. Accounting Requirements

A. No insurer subject to this regulation shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

1. renewal expense allowances provided, or to be provided, to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured;

2. the ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets;

3. the ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty;

4. the ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

5. the reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies.